

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73577; File No. SR-OCC-2014-20)

November 12, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Notice of Filing of Proposed Rule Change to Concerning Updates to Clearing Member Documents

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on November 10, 2014, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (“OCC”) would update the various contracts and forms that, in conjunction with OCC’s By-Laws and Rules, establish and govern the relationship between OCC and each clearing member (collectively, the “Clearing Member Documents”).

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change would amend the Clearing Member Documents in order to: (i) reduce the number of documents by eliminating outdated documents and combining similar documents, when possible; (ii) reflect OCC's current business and operational processes; and (iii) reflect changes in applicable law and conform the documents to OCC's current By-Laws and Rules. The proposed changes to the Clearing Member Documents would not alter any of the requirements for initial or continued OCC clearing membership.

Background

The Clearing Member Documents, in conjunction with OCC's By-Laws and Rules, establish the relationship between OCC and each clearing member and serve as the legal foundation of OCC's ongoing legal and operational relationship with clearing members. OCC recently completed a comprehensive review (the "Review") of the Clearing Membership Documents with a view to revising the documents and ensuring

that they are consistent with OCC's By-Laws and Rules and current operational processes.

The Clearing Member Documents fall into five general categories:

1. *Application Documents.* These are the primary documents used to identify an applicant's qualifications to become a clearing member of OCC.
2. *Core Agreements.* These documents establish the contractual agreement between OCC and a clearing member and provide OCC with authority to carry out critical tasks related to clearing membership. These include, among other agreements, the Clearing Member Agreement and various authorizations to draft and authorized signature forms.
3. *Services Agreements.* These documents govern the provision by OCC of various services to clearing members, such as internet and data distribution services.
4. *Appointment Forms.* These documents permit clearing members that are not participants in National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC") to, as applicable, effect settlement of physically-settled equity options, single stock futures and Treasury securities option contracts through appointment of another clearing member as its agent with respect to settlement of the relevant product.⁵
5. *Product and Account Specific Forms.* These documents facilitate a clearing member's ability to clear certain products or allow a clearing member to establish certain types of accounts such as a market maker sub-account.

⁵ See, OCC Rules 901(f), 901(g) and 1403(a).

Proposed Updates to the Clearing Member Documents

A primary focus of the Review was to eliminate outdated documents and consolidate documents when possible. The Review resulted in the number of distinct Clearing Member Documents being reduced from 39 to 21, either by eliminating documents that are no longer operationally required by OCC or by consolidating and streamlining previously distinct documents, each requiring separate execution, into one document. Attached as Exhibit 3 is a document that lists each of the current Clearing Member Documents and each of the proposed Clearing Member Documents after the consolidation and streamlining effort of the Review. Moreover, the Review did not result in any new substantive legal requirements being imposed upon clearing members.

In addition, a significant number of the Clearing Member Documents are proposed to be updated to reflect terms used in OCC's By-Laws and Rules that have been revised since the Clearing Member Documents were created or last updated, as applicable. Set forth below is a summary of the significant updates proposed to be made to the Clearing Member Documents. The proposed revisions to the Clearing Member Documents will not result in any substantive changes to OCC's membership requirements.

Application Documents

OCC proposes to revise the Application Documents to eliminate sole proprietorship from the category of applicants⁶ because OCC staff deemed it extremely unlikely that a sole proprietor would apply for clearing membership. The Application for

⁶ The revised Application Documents will contain an "other" category of applicant, which could be used in the event a sole proprietor applies for clearing membership at OCC.

Membership itself would be updated to include new categories of products an applicant may apply to be approved to clear that have been added by OCC since the Application for Membership was created. The Application for Membership would also be streamlined to include representations and information previously obtained through separate forms.

In addition to the changes described above, OCC proposes to revise the Letter of Authorization applicants for clearing membership provide to OCC, which authorizes an applicant's primary regulatory agency to directly notify OCC of an applicant's violation, or suspected violation, of the regulatory agency's financial requirements, and of an applicant's impending operational difficulties. OCC is proposing to broaden such authorization so that OCC may receive notification of an applicant's violation of any rule or regulation of the agency, and notification of the agency's knowledge of the applicant's violation of the rules of any relevant self-regulatory organization.

Core Agreements

Like the Application Documents, the Core Agreements would be revised to eliminate the Sole Proprietorship category. OCC also proposes to revise the Clearing Member Agreement and Non-U.S. Clearing Member Agreement to remove outdated corporate procedures such as requiring a corporate seal, and to consolidate multiple signature pages that were formerly contained in separate documents into a single signature page included within the Clearing Agreement and the Non-U.S. Clearing Member Agreement.⁷ In addition, the Core Agreements would generally be streamlined to reduce unnecessary documents and to reduce the operational burden on clearing

⁷ OCC also proposes to memorialize its existing practice that clearing members keep current information provided to OCC such as information provided pursuant to OCC Rule 203.

members. Specifically, the multiple versions of the Authorizations to Draft, which permit OCC to draft a clearing member's bank account, and the Clearing Member Certificate and Authorized Signatures, which certifies the individuals authorized to execute documents and submit instructions on behalf of a clearing member ("Authorized Signatories"), would be consolidated from separate forms based on the organizational form of the clearing member into single documents.

Furthermore, clearing members established as corporations would no longer be required to obtain a board of director's resolution in order to authorize specified officers to act on behalf of the corporation as Authorized Signatories. The requirement to obtain a board resolution presented a significant burden for these clearing members and was determined to be overly ministerial and unnecessary from a legal or operational perspective. Accordingly, the revised Clearing Member Authorized Signatory Certificate would only require corporate clearing members, like clearing members that are organized as limited liability companies or partnerships, to provide a certification by any officer that holds the rank of vice president or higher setting forth a list (including specimen signatures) of the corporation's Authorized Signatories. Moreover, this certificate would also permit clearing members to designate a person as "Designated Representative" of the clearing member. Designated Representatives, which do not have to be an Authorized Signatory, would be able to take action on behalf of the clearing member in connection with day-to-day routine operational matters such as submitting instructions through OCC's ENCORE system, ENCORE Security Updates and sub account and data distribution service changes. The creation of a Designate Representative is intended to facilitate a completion of routine operational matters.

Services Agreement

OCC proposes to revise its Agreement for OCC Services to reduce the number of documents that a clearing member is required to execute and to move common contractual provisions from individual supplements to the Agreement for OCC Services into the master services agreement. Currently, the Agreement for OCC Services is a one-page master services agreement that further requires a clearing member to execute up to five different supplements setting forth the terms of various services that OCC may provide clearing members. Each supplement contains provisions pertinent to the particular service as well as a number of contractual provisions that are common across all supplements. OCC proposes to streamline this set of agreements by moving such common provisions to the revised Agreement for OCC Services. As a result, each of the supplements would contain only terms and conditions specific to the particular service being selected. These changes would not affect the any substantive terms of the Agreement for OCC Services or any of its supplements.

In addition to streamlining the Agreement for OCC Services, OCC proposes to eliminate the supplement for internet access and move the substantive provisions of such supplement into the master services agreement. Due to the large scale, industry wide, adoption of the internet as the primary means of communication between entities in the financial industry, OCC believes that the master services agreement, and not a supplement, is the more appropriate location for contractual provisions pertaining to clearing member internet access.⁸ OCC is also proposing to generally update the

⁸ OCC also requires clearing members who use the internet as their primary means of communicating with OCC to maintain a back-up communication channel. *See*

Agreement for OCC Services to include or expand on standard contract terms such as provisions governing severability, waiver, governing law and assignment.

Appointment Forms

The Appointment of Clearing Member Agreement permits clearing members that are not participants in NSCC to settle physically settled equity options and single stock futures through NSCC by appointing an “Appointed Clearing Member.” OCC propose to update the agreement to require that the Appointed Clearing Member maintain the net capital required by OCC Rule 309A and remain subject to OCC Rule 309A until the appointment is terminated. OCC Rule 309A was not in place when the Appointment of an Appointed Clearing Member Agreement was created.

In addition, the Designation of Clearing Member Agreement permits clearing members that are not participants in FICC to effect settlement of physically-settled Treasury securities options through a “Designated Clearing Member” that is a participant in FICC. OCC proposes to revise the agreement to be more consistent with the Appointment of Clearing Member Agreement. Specifically, OCC proposes to amend the Designation of Clearing Member Agreement to: 1) provide that certain failures under the agreement may be treated as a default or rule violation under OCC’s By-Laws and Rules; 2) provide that the designation would remain effective for 30 calendar days after notice of revocation of the designation, and would remain effective thereafter with respect to obligations incurred prior to the effective date of the revocation; and 3) require additional representations from the Designated Clearing Member regarding its continued participation in FICC.

Securities Exchange Act Release No. 70704 (October 17, 2013), 78 FR 63263 (October 23, 2013) (SR-OCC-2013-10).

Product and Account Specific Forms

OCC proposes to eliminate two product specific forms, the Portfolio Margining Notice and the Futures Customers' Segregated Account Letter, as they are no longer operationally necessary. Specifically, and with respect to the Futures Customers' Segregated Account Letter, OCC's By-Laws and Rules contain the relevant customer segregated funds language required for Derivatives Clearing Organizations such as OCC by the Commodity Futures Trading Commission. OCC is also proposing to revise the Universal Market Maker Subaccount Letter, which is used to request an automated service whereby OCC directs transactions into "universal" market maker subaccount for a designated market maker or designated group of market makers that trade across multiple exchanges,⁹ to conform the indemnity language to the standard indemnity language used in the other Clearing Member Documents.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹⁰ because the proposed rule change will remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed rule change will achieve this purpose by, as set forth in Rule 17Ad-22(d)(1),¹¹ providing for a well-founded,

⁹ Market making firms may have employees that trade across multiple exchanges, with each exchange identifying such employees with a different acronym(s). OCC's Universal Market Maker Subaccount service ensures that all trades entered into by a market marking firm are directed to a specified subaccount of its clearing firm at OCC for position and margin processing purposes.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(d)(1).

transparent and enforceable legal framework between OCC and its clearing members as well as between OCC and applicants for clearing membership. The proposed rule change will reduce the number of Clearing Member Documents by eliminating outdated agreements and combining similar agreements, updating the Clearing Member Documents to reflect OCC's current business and operational processes, and conforming the Clearing Member Documents to OCC's current By-Laws and Rules. These changes will more clearly set forth the legal relationship between OCC and its clearing members, as well as applicants for clearing membership, thereby removing any potential impediments that may have resulted from OCC continuing to use outdated Clearing Member Documents. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose a burden on competition.¹² The updated Clearing Member Documents affect applicants for clearing membership as well as current clearing members since OCC intends to have each current clearing member re-execute the Clearing Member Documents applicable to its particular membership. No substantive requirements for clearing membership are proposed to be changed.

With respect to applicants for clearing membership, OCC believes that the proposed rule change will make the application process easier since the new Clearing Member Documents will consolidate clarified and more consistent with OCC's By-Laws and Rules. In addition, OCC will ask each current clearing member to re-execute only

¹² 15 U.S.C. 78q-1(b)(3)(I).

the Clearing Member Documents applicable to its particular membership. This request, which will be made of all clearing members, is administrative in nature and will not affect competition among clearing members. Accordingly, OCC does not believe that this proposed rule change will impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors and the public interest;
- (ii) impose any burden on competition; and
- (iii) become operative for 30 days from the day on which it was filed, or

such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(a) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment for (<http://www.sec.gov/rules/sro.shtml>);

or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2014-20 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2014-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_20.pdf.

All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2014-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).